

**DEFENDANT OVERSTOCK.COM, INC.'S ORIGINAL ANSWER AND
COUNTERCLAIM TO PLAINTIFF'S ORIGINAL COMPLAINT**

Defendant and Counterclaimant, Overstock.com, Inc. ("Overstock.com") files this Original Answer and Counterclaim against Plaintiff and Counter Defendant Site Update Solutions LLC ("Plaintiff"), and would show the following:

THE PARTIES

1. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 1 of the Complaint, and therefore denies the same.

2. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 2 of the Complaint, and therefore denies the same.

3. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 3 of the Complaint, and therefore denies the same.

4. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 4 of the Complaint, and therefore denies the same.

5. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 5 of the Complaint, and therefore denies the same.

6. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 6 of the Complaint, and therefore denies the same.

7. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 7 of the Complaint, and therefore denies the same.

8. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 8 of the Complaint, and therefore denies the same.

9. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 9 of the Complaint, and therefore denies the same.

10. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 10 of the Complaint, and therefore denies the same.

11. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 11 of the Complaint, and therefore denies the same.

12. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 12 of the Complaint, and therefore denies the same.

13. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 13 of the Complaint, and therefore denies the same.

14. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 14 of the Complaint, and therefore denies the same.

15. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 15 of the Complaint, and therefore denies the same.

16. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 16 of the Complaint, and therefore denies the same.

17. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 17 of the Complaint, and therefore denies the same.

18. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 18 of the Complaint, and therefore denies the same.

19. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 19 of the Complaint, and therefore denies the same.

20. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 20 of the Complaint, and therefore denies the same.

21. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 21 of the Complaint, and therefore denies the same.

22. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 22 of the Complaint, and therefore denies the same.

23. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 23 of the Complaint, and therefore denies the same.

24. Overstock.com admits the allegations contained in paragraph 24 of the Complaint.

25. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 25 of the Complaint, and therefore denies the same.

26. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 26 of the Complaint, and therefore denies the same.

27. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 27 of the Complaint, and therefore denies the same.

28. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 28 of the Complaint, and therefore denies the same.

29. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 29 of the Complaint, and therefore denies the same.

30. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 30 of the Complaint, and therefore denies the same.

31. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 31 of the Complaint, and therefore denies the same.

32. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 32 of the Complaint, and therefore denies the same.

33. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 33 of the Complaint, and therefore denies the same.

34. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 34 of the Complaint, and therefore denies the same.

35. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 35 of the Complaint, and therefore denies the same.

36. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 36 of the Complaint, and therefore denies the same.

JURISDICTION AND VENUE

37. Overstock.com admits that Plaintiff has brought an action alleging infringement of a United States patent, but denies there is any basis in law or fact for such allegations contained in paragraph 37 of the Complaint. Overstock.com further admits that patent laws of the United States of America include 35 U.S.C. § 1 et seq. and that jurisdiction for patent infringement may be provided for under Title 35 United States Code, particularly § 271, and Title 28 United States Code, particularly § 1338(a). To the extent that paragraph 37 of the Complaint contains additional factual allegations, Overstock.com denies them.

38. Overstock.com admits that, to the extent Plaintiff has sufficiently alleged a patent infringement cause of action, venue could be proper in this Court under the provisions of 28 U.S.C. §§ 1391(b) and/or 1400(b). To the extent that paragraph 38 of the Complaint contains additional factual allegations, Overstock.com denies them.

PATENT INFRINGEMENT COUNT

39. Overstock admits that U.S. Reissue Patent No. RE40,683 ("the RE'683 patent") is titled "Process for Maintaining Ongoing Registration for Pages on a Given Search Engine" and has an issue date of March 24, 2009. To the extent that paragraph 39 of the Complaint contains additional factual allegations, Overstock.com denies them.

40. Overstock admits that 35 U.S.C. § 282 states that there is a presumption of validity of an issued patent. To the extent that paragraph 40 of the Complaint contains additional factual allegations or legal conclusions regarding the actual validity of the RE'683 patent, Overstock.com denies them.

41. Overstock admits that the face of the RE'683 patent lists Alan Perkins as an inventor of the RE'683 patent. To the extent that paragraph 41 of the Complaint contains additional factual allegations, Overstock.com denies them.

42. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 42 of the Complaint, and therefore denies the same.

43. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 43 of the Complaint, and therefore denies the same.

44. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 44 of the Complaint, and therefore denies the same.

45. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 45 of the Complaint, and therefore denies the same.

46. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 46 of the Complaint, and therefore denies the same.

47. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 47 of the Complaint, and therefore denies the same.

48. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 48 of the Complaint, and therefore denies the same.

49. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 49 of the Complaint, and therefore denies the same.

50. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 50 of the Complaint, and therefore denies the same.

51. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 51 of the Complaint, and therefore denies the same.

52. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 52 of the Complaint, and therefore denies the same.

53. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 53 of the Complaint, and therefore denies the same.

54. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 54 of the Complaint, and therefore denies the same.

55. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 55 of the Complaint, and therefore denies the same.

56. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 56 of the Complaint, and therefore denies the same.

57. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 57 of the Complaint, and therefore denies the same.

58. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 58 of the Complaint, and therefore denies the same.

59. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 59 of the Complaint, and therefore denies the same.

60. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 60 of the Complaint, and therefore denies the same.

61. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 61 of the Complaint, and therefore denies the same.

62. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 62 of the Complaint, and therefore denies the same.

63. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 63 of the Complaint, and therefore denies the same.

64. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 64 of the Complaint, and therefore denies the same.

65. Overstock.com denies the allegations in paragraph 65 of the Complaint regarding Overstock.com. To the extent that paragraph 65 of the Complaint contains additional factual allegations related to the other defendants, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 65 of the Complaint, and therefore denies the same.

66. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 66 of the Complaint, and therefore denies the same.

67. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 67 of the Complaint, and therefore denies the same.

68. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 68 of the Complaint, and therefore denies the same.

69. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 69 of the Complaint, and therefore denies the same.

70. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 70 of the Complaint, and therefore denies the same.

71. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 71 of the Complaint, and therefore denies the same.

72. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 72 of the Complaint, and therefore denies the same.

73. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 73 of the Complaint, and therefore denies the same.

74. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 74 of the Complaint, and therefore denies the same.

75. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 75 of the Complaint, and therefore denies the same.

76. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 76 of the Complaint, and therefore denies the same.

77. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 77 of the Complaint, and therefore denies the same.

78. After reasonable investigation, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the allegations contained in paragraph 78 of the Complaint, and therefore denies the same.

DEMAND FOR JURY TRIAL

79. Paragraph 79 is a demand for jury trial, which does not require an admission or denial. Overstock.com also demands a jury trial pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

80. Paragraphs (A) thru (F) of the Prayer for Relief of the Complaint are a request for relief, which do not require an admission or denial. In any event, Overstock.com denies that Plaintiff is entitled to recover and/or receive any of the relief sought in paragraphs (A) thru (F) against, and as it relates to, Overstock.com. To the extent that paragraphs (A) thru (F) contain factual allegations, Overstock.com denies them. To the extent that paragraphs (A) thru (F) contain the request for relief with respect to the remaining defendants, Overstock.com is without sufficient information or knowledge to form a belief as to the truth or falsehood of the request for relief with respect to the remaining defendants, and therefore denies the same.

AFFIRMATIVE DEFENSES

81. Overstock.com has not and does not (i) literally infringe, (ii) infringe under the doctrine of equivalents, (iii) contributorily infringe, or (iv) induce infringement of the RE'683 patent.

82. The claims of the RE'683 patent are invalid and unenforceable under the patent laws, including the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, particularly when those claims are sought to be interpreted to cover the business activities of Overstock.com.

83. Plaintiff's claims are barred by the equitable doctrine of laches.

84. Plaintiff's claims are barred by the equitable doctrine of estoppel.

85. Plaintiff's claims are barred in whole or in part by 35 U.S.C. § 286.

86. On information and belief, Plaintiff's claims are barred by patent misuse.

87. Plaintiff's claims are barred in whole or in part by the doctrine of prosecution history estoppel.

88. Some or all of the Defendants have been improperly joined in a single action and Overstock.com asserts its right to a separate trial.

COUNTERCLAIM

For its Counterclaim, Overstock.com alleges as follows:

Declaration of Patent Non-Infringement, Invalidity and Unenforceability

1. This counterclaim arises under 28 U.S.C. §§ 2201 and 2202, and this Court has jurisdiction under the laws of the United States concerning actions relating to patents, 28 U.S.C. § 1338(a). There is an actual justiciable controversy between Overstock.com and Plaintiff concerning the alleged infringement, validity, scope and enforceability of U.S. Reissue Patent No. RE40,683 ("the RE'683 patent"). Jurisdiction is also conferred upon this Court in that this counterclaim arises out of the same transaction that is the subject matter of the Complaint.

2. Venue is proper in this Court under Title 28, U.S.C. §1391 (b) and (c), in that the claims arose within this Judicial District.

3. Plaintiff claims to be the present owners of all right, title and interest in and to the RE'683 patent, including the right to sue and recover damages for infringement.

4. Plaintiff has asserted that activities of Overstock.com in the United States infringe the RE'683 patent.

5. On information and belief, the RE'683 patent is invalid and void under the provisions of 35 U.S.C. §§ 101, 102, 103, and/or 112, as set forth specifically in the affirmative defenses of the Original Answer to Plaintiff's Original Complaint to which this counterclaim is appended.

6. Plaintiff has, in bad faith, knowingly undertaken to enforce the RE'683 patent against Overstock.com while knowing that the RE'683 patent is invalid.

7. Overstock.com has not infringed and is not infringing any claim of the RE'683 patent.

8. Therefore, because of the foregoing, there exists an actual controversy between the parties as to the validity, enforceability, and infringement of the RE'683 patent to which Overstock.com requests a declaratory judgment in its favor.

9. Based upon the foregoing conduct of Plaintiff, this is an exceptional case under 35 U.S.C. § 285.

10. As a result of Plaintiff's conduct and 28 U.S.C. § 2202, Overstock.com is entitled to recover attorneys' fees.

PRAYER

WHEREFORE, Defendant, Overstock.com, Inc. prays that:

- a. Plaintiff's Complaint be dismissed in its entirety, with prejudice;
- b. A holding of non-infringement of the RE'683 patent be entered relating to Overstock.com;
- c. U.S. Reissue Patent No. RE40,683 be declared invalid;
- d. U.S. Reissue Patent No. RE40,683 be declared unenforceable;
- e. The Court find this to be an exceptional case; and
- f. Plaintiff be ordered to pay attorneys' fees and costs to Overstock.com and any such additional amount that appears reasonable to the Court.

Dated: June 7, 2010.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: /s/ John H. Barr, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record via electronically pursuant to the Federal Rules of Civil Procedure on the 7th day of June, 2010.

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